



January 28, 2014

HOUSE BILL No. 1216

DIGEST OF HB 1216 (Updated January 28, 2014 4:01 pm - DI 87)

Citations Affected: IC 36-7.

Synopsis: Zoning changes and annexation. Allows a municipal legislative body that annexes real property subject to a commitment to modify or terminate the commitment after considering the recommendation of the municipal plan commission. Allows the legislative body of the annexing municipality to enforce a zoning commitment. Provides that a decision of the legislative body of the annexing municipality regarding modification or termination of a zoning commitment is a legislative act and is not subject to judicial review. Allows the legislative body of a municipality, after considering the recommendation of the municipal plan commission, to make zoning changes: (1) to an area that the municipality proposes to annex; and (2) that will take effect on or after the effective date of the annexation. Allows the board of zoning appeals (board) of the municipality to approve applications for variances, special exceptions, special uses, contingent uses, and conditional uses (applications) in an area that the municipality proposes to annex, if the board's approval of the application is effective on or after the effective date of the annexation. Provides that if the proposed annexation does not take place, any zoning changes adopted by the municipal legislative body and any applications approved by the board are void.

Effective: July 1, 2014.

Truitt, Price

January 14, 2014, read first time and referred to Committee on Local Government.
January 28, 2014, amended, reported — Do Pass.

HB 1216—LS 7078/DI 87



January 28, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1216

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-4-1015, AS AMENDED BY P.L.126-2011,
2 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 1015. (a) As a condition to the:

- 4 (1) adoption of a rezoning proposal;
5 (2) primary approval of a proposed subdivision plat or
6 development plan;
7 (3) approval of a vacation of all or part of the plat; or
8 (4) approval of an application for a:
9 (A) special exception;
10 (B) special use;
11 (C) contingent use;
12 (D) conditional use; or
13 (E) variance;

14 the owner of a parcel of real property may be required or allowed to
15 make a commitment to the plan commission or board of zoning
16 appeals, as applicable, concerning the use or development of that

HB 1216—LS 7078/DI 87



- 1 parcel.
- 2 (b) Commitments are subject to the following provisions:
- 3 (1) A commitment must be in writing.
- 4 (2) Unless the written commitment is modified or terminated in
- 5 accordance with this subsection, a written commitment is binding
- 6 on the owner of the parcel.
- 7 (3) A commitment shall be recorded in the office of the county
- 8 recorder. After a commitment is recorded, it is binding on a
- 9 subsequent owner or any other person who acquires an interest in
- 10 the parcel. However, a commitment is binding on the owner who
- 11 makes the commitment even if the commitment is unrecorded. An
- 12 unrecorded commitment is binding on a subsequent owner or
- 13 other person acquiring an interest in the parcel only if that
- 14 subsequent owner or other person has actual notice of the
- 15 commitment.
- 16 (4) A commitment may contain terms providing for its own
- 17 expiration. A commitment may also contain terms providing that
- 18 the commitment automatically terminates:
- 19 (A) if the zoning district or classification applicable to the
- 20 parcel is changed;
- 21 (B) if the land use to which the commitment relates is
- 22 changed; or
- 23 (C) otherwise in accordance with the rules of the plan
- 24 commission or board of zoning appeals to which the
- 25 commitment is made.
- 26 (5) Except for a commitment that expires or automatically
- 27 terminates under subdivision (4), **or except as provided in**
- 28 **subdivision (10)**, a commitment may be modified or terminated
- 29 only by a decision of the plan commission or board of zoning
- 30 appeals to which the commitment was made. The decision must
- 31 be made at a public hearing after notice of the hearing has been
- 32 provided under the rules of the plan commission, or board of
- 33 zoning appeals, as the case may be.
- 34 (6) During the time a rezoning proposal is being considered by the
- 35 legislative body under the 600 or 1500 series of this chapter, the
- 36 owner may make a new commitment to the plan commission or
- 37 modify the terms of a commitment that was made when the
- 38 proposal was being considered by the plan commission. **This**
- 39 **subdivision does not apply to a commitment to which**
- 40 **subdivision (10) applies.**
- 41 (7) No further action of the plan commission is required for a new
- 42 commitment made under subdivision (6) to be effective.



(8) If a commitment is modified under subdivision (6) **or (10):**

(A) no further action is required by the plan commission for the commitment to be effective if the effect of the modification is to make the commitment more stringent; or

(B) the modified commitment must be ratified by the plan commission if the effect of the modification is to make the commitment less stringent.

(9) Requiring or allowing a commitment to be made does not obligate the plan commission, board of zoning appeals, or legislative body, as applicable, to adopt, approve, or favorably recommend the proposal or application to which the commitment relates.

(10) This subdivision applies only to a commitment that is made before the parcel subject to the commitment is annexed by a municipality. Subject to subdivision (8), a commitment may be modified or terminated only by a decision of the legislative body of the annexing municipality. The decision must be made by the legislative body of the annexing municipality after considering the recommendation of the municipal plan commission certified to the legislative body after a public hearing held by the plan commission in accordance with the commission's rules. The rules of the municipal plan commission must include a provision requiring notice to be sent by certified mail at least ten (10) days before the date of the hearing to the following:

(A) The plan commission to which the commitment was made.

(B) Each owner of real property, as shown on the county auditor's current tax list, whose real property is located within three hundred (300) feet of the parcel subject to the commitment.

(c) The plan commission or board of zoning appeals may adopt rules:

(1) governing the creation, form, recording, effectiveness, modification, and termination of commitments; and

(2) designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(d) An action to enforce a commitment may be brought in the circuit or superior court of the county by:

(1) the plan commission or board of zoning appeals to which the commitment was made;

(2) in the case of a commitment modified under subsection



(b)(10), the legislative body of a municipality that annexed real property subject to a commitment, if the annexation is effective after the date the commitment was made;

~~(2)~~ **(3)** any person who was entitled to enforce a commitment under the rules of the plan commission or board of zoning appeals in force at the time the commitment was made; or

~~(3)~~ **(4)** any other specially affected person who was designated in the commitment.

(e) A person bringing an action to enforce a commitment may request mandatory or prohibitory injunctive relief through the granting of a temporary restraining order, preliminary injunction, or permanent injunction. If an action to enforce a commitment is successful, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

(f) In an action to enforce a commitment, it is not a defense that:

(1) no consideration was given for the commitment;

(2) the commitment does not benefit any designated parcel of property;

(3) the document setting forth the commitment lacks a seal;

(4) there is no privity of estate;

(5) there is not privity of contract; or

(6) there is no proof of damages.

(g) The following types of conditions, as authorized by this chapter, are not considered commitments and are not subject to subsection (b):

(1) A condition imposed upon primary approval of a plat that must be met before secondary approval of the plat may be granted under the 700 series of this chapter.

(2) A condition imposed upon the approval of an exception, a use, a variance, or a development plan that must be met before an improvement location permit may be issued under the 800 series of this chapter.

(3) A condition imposed upon an approval relative to any other development requirement that must be met before any other secondary approval may be granted or building permit may be issued under this chapter.

(4) A condition that was imposed before July 1, 2011, on an approval relative to any development requirement. However, this subdivision applies only if a copy of the condition has been filed and permanently maintained as a public record in the office of the plan commission or board of zoning appeals that imposed the condition.

(h) Covenants, easements, equitable servitudes, and other land use



1 restrictions created in accordance with law are not considered
2 commitments and are not subject to subsection (b).

3 SECTION 2. IC 36-7-4-1016, AS AMENDED BY P.L.126-2011,
4 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2014]: Sec. 1016. (a) Final decisions of the board of zoning
6 appeals under:

7 (1) the 900 series of this chapter (administrative appeals,
8 exceptions, uses, and variances); or

9 (2) section 1015 of this chapter (appeals of commitment
10 modifications or terminations);

11 are considered zoning decisions for purposes of this chapter and are
12 subject to judicial review in accordance with the 1600 series of this
13 chapter.

14 (b) The following decisions of the plan commission are considered
15 zoning decisions for purposes of this chapter and are subject to judicial
16 review in the same manner as that provided for the appeal of a final
17 decision of the board of zoning appeals under subsection (a):

18 (1) A final decision under the 700 series of this chapter
19 (subdivision control).

20 (2) A final decision under section 1015 of this chapter (appeal of
21 a commitment modification or termination).

22 (3) A final decision under the 1400 series of this chapter
23 (development plans).

24 (4) A final decision under the 1500 series of this chapter (planned
25 unit development), when authority to make a final decision is
26 delegated to the plan commission by the legislative body under
27 section 1511 of this chapter.

28 **(c) Notwithstanding subsection (b)(2), a decision of a legislative**
29 **body under section 1015(b)(10) of this chapter is not considered a**
30 **zoning decision for purposes of this chapter and is not subject to**
31 **judicial review in accordance with the 1600 series of this chapter.**

32 ~~(c)~~ (d) Final decisions of preservation commissions under
33 IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3 (certificates of
34 appropriateness) are considered zoning decisions for purposes of this
35 chapter and are subject to judicial review in the same manner as that
36 provided for the appeal of a final decision of the board of zoning
37 appeals under subsection (a).

38 ~~(d)~~ (e) Final decisions of zoning administrators under IC 14-28-4-18
39 (improvement location permits within flood plain areas) are considered
40 zoning decisions for purposes of this chapter and are subject to judicial
41 review in the same manner as that provided for the appeal of a final
42 decision of the board of zoning appeals under subsection (a).



(f) The following actions are legislative acts and are not considered zoning decisions for purposes of this chapter:

- (1) Adopting or approving a comprehensive plan under the 500 series of this chapter.
- (2) Certifying with or without a recommendation a proposal under the 600 series of this chapter.
- (3) Adopting, rejecting, or amending a zoning ordinance under the 600 series of this chapter.
- (4) Adopting, rejecting, or amending an impact fee ordinance under the 1300 series of this chapter.
- (5) Designating a zoning district where a development plan is required under the 1400 series of this chapter.
- (6) Adopting, rejecting, or amending a PUD district ordinance under the 1500 series of this chapter.
- (7) Adopting, rejecting, or amending a flood plain zoning ordinance under IC 14-28-4.

(8) Certifying a recommendation, or modifying or terminating a commitment, under section 1015(b)(10) of this chapter.

SECTION 3. IC 36-7-4-1112 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 1112. (a) This section applies to any municipality that proposes to make zoning changes for an area:**

- (1) that the municipality is proposing to annex under IC 36-4-3; and**
- (2) that is not already within the municipality's planning and zoning jurisdiction under this chapter.**

(b) The plan commission of the municipality may give notice, hold a public hearing, and certify a zoning change to the legislative body of the municipality under section 602 of this chapter before the expected effective date of the proposed annexation. In addition, the zoning change may be considered by the legislative body and duly adopted before the expected effective date of the proposed annexation. However, the zoning change must provide for an effective date that is on or after the effective date of the proposed annexation.

(c) Subject to subsection (b), section 602(b) of this chapter applies to the initiation of any proposals to amend or partially repeal the text of the municipal zoning ordinance as it may apply to the area proposed to be annexed.

(d) Subject to subsection (b), section 602(c) of this chapter applies to the initiation of any zone map changes for the area



1 proposed to be annexed in the same manner as it applies to the
2 initiation of zone map changes for an area that is already within
3 the municipality's planning and zoning jurisdiction.

4 (e) If the proposed annexation by the municipality does not take
5 place under IC 36-4-3, the adoption of a zoning change under this
6 section is void.

7 (f) The board of zoning appeals of the municipality may adopt
8 rules, in accordance with IC 36-7-4-916, to allow hearings to be
9 heard on applications for variances, special exceptions, special
10 uses, contingent uses, and conditional uses in the area proposed to
11 be annexed before the expected effective date of the proposed
12 annexation. However, the rules must require that any approval of
13 such an application provide for an effective date that is on or after
14 the effective date of the proposed annexation. If the proposed
15 annexation by the municipality does not take place under
16 IC 36-4-3, any action taken by the board under this subsection is
17 void.

18 (g) Nothing in this section is intended to supersede:

19 (1) IC 36-4-3-4.1 regarding the annexation of any territory
20 that is classified for zoning purposes as agricultural; or

21 (2) IC 36-7-4-1109 regarding property rights.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1216, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 13, delete "This subdivision applies only to a commitment that is".

Page 3, line 14, delete "made after June 30, 2014."

Page 3, line 20, delete "at" and insert **"after considering the recommendation of the municipal plan commission certified to the legislative body after"**.

Page 3, line 20, delete "after" and insert **"held by the plan commission in accordance with the commission's rules."**.

Page 3, delete line 21.

Page 3, line 22, delete "municipal legislative body."

Page 3, line 23, delete "legislative body" and insert **"plan commission"**.

Page 5, line 28, delete "Decisions" and insert **"Notwithstanding subsection (b)(2), a decision"**.

Page 5, line 29, delete "are considered zoning decisions" and insert **"is not considered a zoning decision"**.

Page 5, line 30, delete "are" and insert **"is not"**.

Page 6, after line 16, begin a new line block indented and insert:

"(8) Certifying a recommendation, or modifying or terminating a commitment, under section 1015(b)(10) of this chapter."

SECTION 3. IC 36-7-4-1112 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 1112. (a) This section applies to any municipality that proposes to make zoning changes for an area:**

(1) that the municipality is proposing to annex under IC 36-4-3; and

(2) that is not already within the municipality's planning and zoning jurisdiction under this chapter.

(b) The plan commission of the municipality may give notice, hold a public hearing, and certify a zoning change to the legislative body of the municipality under section 602 of this chapter before the expected effective date of the proposed annexation. In addition, the zoning change may be considered by the legislative body and duly adopted before the expected effective date of the proposed



annexation. However, the zoning change must provide for an effective date that is on or after the effective date of the proposed annexation.

(c) Subject to subsection (b), section 602(b) of this chapter applies to the initiation of any proposals to amend or partially repeal the text of the municipal zoning ordinance as it may apply to the area proposed to be annexed.

(d) Subject to subsection (b), section 602(c) of this chapter applies to the initiation of any zone map changes for the area proposed to be annexed in the same manner as it applies to the initiation of zone map changes for an area that is already within the municipality's planning and zoning jurisdiction.

(e) If the proposed annexation by the municipality does not take place under IC 36-4-3, the adoption of a zoning change under this section is void.

(f) The board of zoning appeals of the municipality may adopt rules, in accordance with IC 36-7-4-916, to allow hearings to be heard on applications for variances, special exceptions, special uses, contingent uses, and conditional uses in the area proposed to be annexed before the expected effective date of the proposed annexation. However, the rules must require that any approval of such an application provide for an effective date that is on or after the effective date of the proposed annexation. If the proposed annexation by the municipality does not take place under IC 36-4-3, any action taken by the board under this subsection is void.

(g) Nothing in this section is intended to supersede:

- (1) IC 36-4-3-4.1 regarding the annexation of any territory that is classified for zoning purposes as agricultural; or
- (2) IC 36-7-4-1109 regarding property rights."

and when so amended that said bill do pass.

(Reference is to HB 1216 as introduced.)

NEESE, Chair

Committee Vote: yeas 9, nays 1.

